

Road Accident Claims Compensation under Motor Vehicles Act, 1988

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Abstract

Every year, a large number of people are killed in car accidents. It is sometimes their fault, and other times they are held responsible for the actions of others. What, on the other hand, is the solution for someone who suffers as a result of the wrongdoings of others? The remedy is the Motor Vehicles Act of 1988. All criminals are held accountable under this Act, and as a result of their penalty, they must pay the victim. This Motor Vehicle Act, 1988 intends to prevent motor vehicles accidents and, in the event that do occur, to ensure that the victim receives justice and that the individual who caused the accidents is held accountable.

Key Words: Accidents, Claims Tribunals, Compensation, Just Compensation, Motor Vehicles Act 1988.

A. INTRODUCTION

Victim compensation is a well-established legal norm that is enforced by civil courts. Victims of personal harm or property damage can seek compensation under tort law. The victims have been waiting decades for a civil court order for damages or compensation, which has caused them great suffering. The creation of compensatory jurisprudence in light of human rights philosophy is a positive sign that the judiciary has taken on the responsibility of defending all people's right to life and personal liberty, despite the lack of specific constitutional provisions and legal precedents. Article 32 gives the Supreme Court the authority to issue any direction, order, or writ, including writs in the nature of habeas corpus, mandamus, prohibition, quo-warrant, and certiorari, as appropriate, for the enforcement of any of the rights granted by Part III of the Constitution, i.e. the right to petition the Supreme Court under Article 32 for the enforcement of any of the rights conferred by Part III of the Constitution is a fundamental right in and of itself.

The term "compensation" by the Law Commission of India, refers to "making up for a loss". Anything given to make things equal, an item given to make up for loss,

recompense, payment, is referred to as compensation. It is a balancing act between the victim's pain and loss as a result of victimisation. The following three perspectives could be used to justify or justify compensation.

- As a type of additional social insurance.
- As a welfare measure, another facet of the government's/public assistance to the less fortunate.
- A method of meeting a government obligation to all citizens that has been overlooked.

There is no comprehensive legislation or statutory structure in India that provides compensation to crime victims. In certain European countries, procedures have been developed for the payment of compensation to crime victims during criminal proceedings. A person who has suffered must be compensated, according to justice. In essence, the accused is to blame for the victim's suffering.

There are five Laws that allow victims of crime to receive compensation.

1. The 1855 Fatal Accident Act
2. The 1988 Motor Vehicles Act
3. The 1973 Criminal Procedure Code

4. Constitutional Remedies for Violations of Human Rights
5. The Probation of Offenders Act, which was enacted in 1958.

It is impossible to go after every Act connected to compensation when we just have to go after one Act only i.e. the Motor Vehicle Act 1988. Let's look at what compensation means in the Motor Vehicles Act and how victims of Motor Vehicle accidents are compensated and where?

As everyone is aware about the fact that a large number of people are being killed and injured in traffic accidents every year in India. Accidents have happened as a result of their fault or carelessness in some situations, and as a result of the fault or negligence of third parties or motor vehicle owners in other cases. Under the Motor Vehicles Act 1988 a person injured in a car accident or the legal representatives of a person killed in a car accident can seek compensation. It is a statute aimed at preventing motor vehicle accidents and in the event that one does occur, providing adequate compensation to those who have been wounded as well as to punish wrongdoers. The Motor Vehicle Act 1988, which replaced the Motor Vehicle Act 1939, is a comprehensive law. It went into effect on July 1, 1989. The Motor Vehicles Act 1914 was the first legislation governing road transport vehicles. The Motor Vehicles Act 1939 eventually replaced the Act 1914. With the passage of time, the need for new changes became more pressing, and the Motor Vehicle Act 1988 was enacted. The Motor Vehicles Act 1988 governs all cases involving motor vehicles in India. The government has put in place cases involving motor vehicle accidents will be handled by Motor Appellate Claim Tribunals. The Act regulates all aspects of road transport vehicles, including registration, licensing, regulation, claims,

and compensation in the event of an accident, among other things.

B. CLAIM TRIBUNAL FOR MOTOR VEHICLE ACCIDENTS

The Motor Accident Claim Tribunal was established to hear matters involving the Motor Vehicles Act, 1988. The Claims Tribunal's principal goal is to ensure that cases are heard quickly and that justice is served. The claimant should submit his or her claim within a fair time frame. Appeals against the Claims Tribunals will be heard by the High Courts, according to Section 173 of the Act. The appeals must be lodged within 90 days after the decision's publication. If the claimant is late in filing the appeal, he must provide an acceptable explanation for the delay. If the Court is satisfied, the appeal will be accepted. If the amount in dispute in the appeal is less than the amount in dispute in the original, the appeal will be dismissed. It would not be considered if the amount is less than Rs10,000/-. The Motor Accident Claim Tribunal hears cases involving the loss of life or property, as well as injuries. Claims can be filed with the relevant Claims Tribunal. These Tribunals are overseen by the high courts of the states.

It is pertinent that Section 173 of the Motor Vehicles Act, 1988 deals with the concept of "just compensation" which ought to be determined on the foundation of fairness, reasonableness and equitability because such determination can never be arithmetically exact and can never be perfect. Section 168 of the Motor Vehicles Act provides that the learned Tribunal shall conduct an inquiry into the claim petition. Section 169 of the Motor Vehicles Act provides that the learned Tribunal shall follow such summary procedure as it deem fit to conduct such an inquiry. The inquiry stipulated in Section 168 of the Motor Vehicles Act is different from the civil trial.

Said Section of the Motor Vehicles Act, casts a duty on the learned Tribunal to conduct an inquiry in a meaningful manner. The object of the legislature behind making this provision is that the victims of road accidents are not left at their own mercy.

C. THE BASIC RULES OF THE MOTOR VEHICLES ACT, 1988 ARE LISTED BELOW.

According to Section 3 of the Act, no person can drive a vehicle without any authorized driving license, and without any driving license authorizing a person to drive a transport he cannot drive such a vehicle. Section 4 states that unless a person attains the age of majority (18 years) he cannot drive a vehicle. From Section 35 to Section 65 procedure for the registration of the vehicle has been laid down and it has been made mandatory to get one's vehicle registered. It is necessary for the vehicle owner to get third party insurance as stated from Sections 145 to 164. Section 166 of the Act tells about who can apply for compensation in the Motor Accident Claims Tribunal.

i) Who can claim compensation in MACT cases?

As per Section 166 of the Act, a person claims compensation if:

- i. He has sustained an injury.
- ii. He is the owner of the property.
- iii. He is the legal representative of the person who died in the motor accident.
- iv. He is the agent authorized by the injured person, or by the legal representatives of the deceased, as the case may be.

ii) When can compensation be claimed?

There is no prescribed limit within which the claim application has to be filed. But claiming the compensation after a long

unnatural period might result in raising doubts in the minds of the Tribunal.

Therefore, even though there is no prescribed limit to apply for compensation it should be claimed within a reasonable time.

According to Section 165(1) of the Motor Vehicles Act, 1988 the Claims Tribunal can entitle compensation to the claimant in the following circumstances;

- a. When the accident involves death or bodily injury to a person
- b. When the accident results in the loss of any property of a third party
- c. When such accidents arise out of the use of motor vehicles

iii) Where can compensation be claimed?

The application for the claim can be filed in the following tribunals;

- i) The Claims Tribunal where the claimant resides
- ii) The Claims Tribunal where the owner of the vehicle resides
- iii) The Claims Tribunal where the accident took place

It is pertinent that Section 168 of the Motor Vehicles Act deals with the concept of "just compensation" which ought to be determined on the foundation of fairness, reasonableness and equitability because such determination can never be arithmetically exact and can never be perfect. Section 168 of the Motor Vehicles Act provides that the learned Tribunal shall conduct an inquiry into the claim petition. Section 169 of the Motor Vehicles Act provides that the learned Tribunal shall follow such summary procedure as it deem fit to conduct such an inquiry. The inquiry stipulated in section 168 of the Motor Vehicles Act is different from the civil trial. Section 168 of the Motor Vehicles Act casts a duty on the learned Tribunal to conduct an inquiry in a meaningful manner. The object

of the legislature behind making this provision is that the victims of road accidents are not left at their own mercy.

It indicates that "*Just Compensation*" is a sum of money determined by a tribunal or the courts to be enough for an injured person or the legal representatives of a deceased person in the event of a traffic accident. Fairness, reasonableness, and equitability will be the guiding principles. On the one hand, compensation should not be used as a means of exploitation or earning, and on the other side, it should not be less than what is required for equality. A person's loss of life, limbs, or mental torment in an accident cannot be measured on a monetary basis. Compensation should be adequate and based on fairness, equality, and reasonability standards. The concept of "Just Compensation" is based on a number of well-established principles and accepted legal criteria, as well as a number of other factors like good conscience, equity and reasonableness.

In case of **Maharashtra State Road Transport Corporation & Others Vs. Mr. Helen C. Rebello & Others**¹ When it comes to "Just Compensation," it has been determined that the term "Just" as a nomenclature denotes equitability, fairness, and reasonableness in a broad sense. Of course, the size is not arbitrary, it is limited by a standard that is fair, reasonable, and equitable. if it exceeds, it is described as unfair, irrational, inequitable, and unjust. The tribunal's larger discretion must be limited by the aforementioned constraints. It is necessary to make an award defining the amount of compensation that appears "*Just and Reasonable*," because recompense for the loss of living limbs is difficult to balance on golden scales.

¹ 1998(4)RCR(Civil) 177

² 2010(4)RCR(Civil)155

In **Divisional Manager, National Insurance Company Limited, and others v. Yadav Kumar**² "It goes without saying that in terms of determining compensation, both the tribunal and the High Court are statutorily charged with fixing "Just Compensation" according to it, it is self-evident that determining just compensation cannot be compared to a jackpot. At the same hand, the concept of "Just Compensation" clearly implies that tribunals and courts should apply fair and equitable standards and take a reasonable approach. This reasonableness on the tribunal's and court's parts must be in a vast peripheral field." Since the law values life and limb in a free country, the decision of the quantum of "Just Compensation " must be broad, not stingy.

It was held in **Raj Rai Vs. Oriental Insurance Company Limited**³ Because the Court's role is to seek "Just Compensation," it will attempt to reach such a conclusion regardless of whether the claimant has submitted any such claim.

As stated above, the Motor Tribunals are supposed to determine such compensation, which may appear to be "Just Recompense," which would mean "just compensation" for an injury caused in an accident caused by the motorist's negligence. As a result, "just" could refer to something that is appropriate, equitable, or proper. It means that the compensation sum should be calculated in such a way that the legal representatives of the deceased can receive or earn the same advantages from the deceased as they might have had from him if he had lived his normal life.

In **Surinder Kaur Vs. Bhagat Singh**⁴ the payment of a compensation amount that

³ 2009 JT325

⁴ 1978 80 Punjab LR 732.

will allow the deceased's legal representatives to receive more money than you. The award of a compensation amount that would enable the legal representatives of the deceased to earn more pecuniary benefits than those available to them from the deceased during his lifetime would be improper, and the award of a compensation amount that would not enable such legal representatives to earn as much pecuniary benefits as those available to them from the deceased during his lifetime would be unequal. As a result, the compensation to be assessed that can be described as "just" as contemplated by Section 168 should be such that, if prudently invested in a Schedule Bank, would earn interest equal to the pecuniary benefit that would have been available to the deceased's legal representatives if he had died by negligence of motor vehicles.

The Court stated in **Concord of India Insurance Co. Ltd. Vs. Nirmala Devi**⁵ that "the jurisprudence of compensation for motor vehicle accidents must develop in the direction of no-fault liability and determination of the quantum must be liberal and not niggardly, since law values life and limbs on generous scales in a free country."

In **Ramla and others v. National Insurance Company Limited and others**⁶ stated that

"Just compensation" is remuneration decided based on the evidence presented. It cannot be regarded as time-barred, and there is no reason to initiate a new complaint for a previously increased amount. The Court further stated that the courts have the authority to give compensation in excess of what the plaintiffs have requested. The claimants in

the above-mentioned case sought an increase in the Rs 25, 000/- compensation awarded to them by the Kerala High Court. The amount was not sufficient under the heading of 'loss of reliance,' according to the Supreme Court. As a result, the amount was increased to Rs 28, 000/-

D. THE FOLLOWING ARE SOME IMPORTANT CASES OF COMPENSATION.

1. In the event of a bus accident, a bus passenger seeks full compensation.

The fundamental duty of both the driver and the conductor is to verify specifically, whether any passenger is getting into the bus or is getting off the bus, before the bus is actually moved from the bus stop where it is stopped, regardless of whether that place of stopping is a bus stop or not," the court stated in **Venkataswami Motor Service v. C.K Chinnaswamy**. As a result, in the event of a bus passenger accident, the owner or insurance company will be responsible for compensating the sufferer.

2. What happens when both the victim and the driver are to blame?

It is not always the case that only one person is at fault. In some circumstances, there are more than two parties to blame. There are two alternatives in such situations:

Contributory Negligence - In this case, the claimant and the driver both played a role in the accident. It is not only the fault of the motorist, but also of the claimant. As a result, if the claimant contributed equally to the accident's occurrence, his compensation would be cut to half.

⁵ 1980 ACJ 55(SC)

⁶ A.I.R. 2017, the Apex Court

Otherwise, his remuneration will be decreased in proportion to his culpability.

Composite Negligence- An accident occurs as a result of the negligence of two or more parties other than the victim. There is no culpability on the part of the victim in this case. When more than two parties are involved in an accident and seek reimbursement under the third-party insurance policy, the amount will be determined based on the drivers' combined negligence.

3. Compensation to an accident caused by a driver who is under the age of 18.

A minor is someone under the age of 18 who is not legally capable of taking full legal responsibility for his or her acts and their consequences thereof. According to the Motor Vehicles Act of 1988, an underage individual who does not meet the standards of section 3 and of the said Act, is ineligible for a drivers licence and has committed an offence if he does. When an accident occurs as a result of an underage driver, the insurance company is not responsible for compensating the victim. The child's parents or legal guardians will be held accountable. The juvenile will be fined Rs 25,000 and sentenced to three years in prison, and will be tried under the Juvenile Justice (Care and Protection of Children) Act, 2015 with the vehicle's registration being cancelled

4. Amounts of compensation that is available in case of a child's death?

When a person dies in an accident, his or her compensation is usually calculated depending on his or her earning potential and age. But what if a youngster is killed in a car accident; it's not as if he earns money for his family, so how would compensation

be determined in this case? In one of its rulings, the Supreme Court stated that if a kid dies in an accident, the child's educational qualification and school achievement shall be considered for determining compensation. If the youngster did well in school, he would have a brilliant future, which would imply further loss. As a result, he would be paid more. However, it is true that there is no standard method for calculating a claim in the event of a child's death. In case of **Ravinder (minor) v. Sant Ram and others**⁷ the claim petition filed under Section 166 of the Act. The case of a youngster who had 100 percent damage was handled, and a total compensation of Rs.30, 60,000/- was awarded.

5. In the event of a car accident, if the victim is a wife, there is compensation available.

It is once again a case in which the victim is not the family's breadwinner. The compensation cannot be decreased on the grounds that the victim is not the family's primary breadwinner and that the family may be cared for by another family member. As a result, in 1994, the legislature set the monthly income of a non-working person at Rs 15, 000/-, and in the case of a spouse, it would be the 13th income of the spouse who works for the purposes of calculating accident claims. The honorable Supreme Court has repeatedly held that the services of the housewife should be considered on par with those of the earning members of society. The court held that services rendered by a housewife cannot be less valued than what a daily wager can earn when awarding compensation in **Sukhwinder Kaur and others v. Puran Singh and others (P&H)**⁸ Under Section 166 the deceased-lady was a household lady aged about 45 years, and while

⁷ 2016 (1) L.A.R. 542 (P&H)

⁸ 2016(3) L.A.R 210

considering the relevant facts the court held that services rendered by a housewife cannot be less valued than what a daily wagger can earn.

6. In the event of a two-wheeler or car accident, can a pillion rider and a co-passenger seek compensation? Oriental Insurance Co. Ltd. v. Supreme Court Sudhakaran⁹

(i) A pillion rider or a co-passenger is not entitled to compensation from the insurance company. It is only conceivable if this aspect was included in the policy from the start and the requisite money was paid for it.

(ii) In the event of an accident caused by the owner of the two-wheeler or car's careless driving, the co-passenger or pillion rider of such car or two-wheeler will not be regarded as a third-party.

Some decided case laws before the Claims Tribunal:

In **Rajasthan State Road Transport v. Kailash Nath Kothari & Ors.**¹⁰ In this case, a bus was involved in an accident, and the vehicle's driver was not the bus's genuine owner. Furthermore, the bus had been rented to a Corporation, which had appointed the bus's driver. As a result, the bus was not in the custody of its rightful owner. The Corporation was found accountable for the accident and ordered to compensate the victims by the Court.

In **Mohan Soni v. Ram Avtar Tomar**¹¹, in this instance, the appellant worked as a cart puller. He was involved in an accident one day, and his leg was severed. His monthly

take-home pay was Rs 3,300. He says no longer able to support his family and earn a living. His pay was determined by the Supreme Court depending on the nature of his service. It was discovered that he had lost at least 90% of his earning capacity. As a result, he was awarded a total compensation of Rs 4, 01, 400/- for mental anguish, Rs 30, 000/- for diet, Rs 15, 000/- for loss of future earnings, and Rs 3, 56, 400/- for loss of future earnings.

In **Ajay Kumar v. Raj Kumar**¹² When the Supreme Court was asked to determine whether there is a link between the physical handicap incurred in an accident and the loss of earning capacity as a result of it, it said that the effect of physical disability on the victim's earning capacity must be determined.

In **Ayyappan v. M/s United India Insurance Co. Ltd. and Others**¹³ In this case, the Court decided that if there is any liability for third-party risk and the vehicle is not insured, the risk must be carried by the owner himself.

The New India Assurance Co. Ltd. & Others v. R. Krishna Murthi¹⁴ In this decision, the Supreme Court urged the government to investigate the liability of creating a Motor Accident Mediation Authority in each district to ensure that accident claims are heard quickly. The following are the two primary elements of this decision:

(i) In 2017, nearly 1, 47,000 individuals died, which is more than the whole population of Shillong, an Indian state.

⁹ (2008) 7 SCC 428

¹⁰ A.I.R 1997 S.C. 3444,

¹¹ 10 January AIR 2012 SPL (Civil Appeal)No. 9850 of 2010

¹² 18 October AIR 2010 Civil Appeal No. 10383 of 2007

¹³ 1 July AIR 2013 Civil Appeal No. 5091 of 2009

¹⁴ 5 March AIR2019 civil Appeal No. 2476-77 of 2019

(ii) As a result of these deaths, the number of accident claims that had already been filed increased dramatically, resulting in an increase in the number of backlog cases in Indian litigation. As a result, the Apex Court, seeing the importance of resolving these disputes, requested the establishment of Mediation Centres.

In **Pranay Sethi v. National Insurance Company Limited**¹⁵ The Supreme Court established rules for determining the amount of compensation that the offender must pay to accident victims who are self-employed, have a fixed wage, or have a permanent salary in this case. The concept of 'just recompense,' according to the Court, should be founded on reasonableness, equity, and fairness.

E. SOME LANDMARK JUDGEMENT ON ACCIDENTAL CLAIMS ASSESSMENT

In **Sarla Verma v. Delhi Transport Corporation**¹⁶ the Supreme Court established the standards for determining the amount of compensation due in the event of a motor vehicle accident death. The Supreme Court ruled that simply because the Tribunal thinks the remuneration is fair does not make it "just compensation." Just compensation is enough compensation that is fair and equitable, based on the facts and circumstances of the case, to make good the loss incurred as a result of the injustice, to the extent that money can make up for it, by following well-established standards relating to compensation award. It is not intended to be a windfall, a generous handout, or a source of profit. Tribunals should determine compensation to ensure

uniformity and consistency. Tribunals shall calculate compensation in circumstances of death by adopting well-established procedures, such as determining the multiplicand (annual contribution to the family), the multiplier, and calculating loss of dependency by multiplying the multiplicand by the multiplier.

A **Constitution Bench of the Apex Court held in National Insurance Company Ltd. v. Pranay sethi**¹⁷ that Section 168 of the Motor Vehicles Act¹⁸ deals with the concept of '*just compensation*' and that it must be determined on the basis of fairness, reasonableness, and equitability on an acceptable legal standard because such determination can never be in arithmetical exactitude. There is no such thing as perfection. On the basis of materials brought to record in a specific situation, the goal is to attain an acceptable degree of arithmetical precision. Fairness, reasonableness, and non-violation of the principle of equitability must be considered while considering the concept of "just recompense." In the event of death, the legal heirs are the ones who inherit. At the same time, the compensation awarded cannot be construed as an apology for compensation. It can't be a smidgen or pittance. Despite the fact that the Tribunal has broad discretion, it is required of the Tribunal to be led by the expression, i.e., just compensation.

Important judgement given in Indian bank v. AS Marine Products ltd¹⁹

Regarding the Articles of 141 & 142 of Indian Constitution, that order issued by the Apex Court in the exercise of its power under Article 142 of the Indian constitution

¹⁵ (2017)16 SCC 680

¹⁶ (2009) 6 SCC 121],

¹⁷ (2017) 16 SCC 680]

¹⁸ MVA, 1988

¹⁹ (2016) 5SCC 72

to do proper justice, as well as any justifications presented for using that power, can't be deemed law laid down by that Court under Article 141. Other courts do not have power bestowed on the Apex Court under Article 141.

In the **State of Puja v. Rafiq Masih**²⁰ finding that, unlike Article 141 of the Indian Constitution, the directives made under Article 142 due to create a binding precedent. They are directives issued to carry out proper justice, and their exercise cannot be regarded as law established by the Supreme Court under Article 141 of the Indian Constitution. The Apex Court also held that the Courts directions under article 142 of the Constitution, while drafting the relief, that relax the application of the law or exempt the case in question from the rigours of the law due to the unique facts and circumstance do not constitute the ratio decided and this do not constitute the ratio decided.

SOME DECIDED RECENT CASE LAWS

In **Ali v. Abdul Jabbar**²¹ Award 'Just' & 'Fair' compensation in case of accident/death under Motor Vehicles Act. New Rules override judgements In the event of an accident or tragedy; it is generally known that the insured wants the highest possible claim, whilst the insurance companies try to avoid sanctioning a just, reasonable, and legal claim. The insurance company and the insured frequently engage in court battles over the amount of claim/compensation, with the insurance companies relying on technicalities to withhold or limit pay. In the recent case of **New India Assurance Co. Ltd. v. Urmila**

Shukla²² The Apex Court considered whether the formula declared by the Apex Court and followed consistently would govern the quantum of compensation or whether the statutory mandate as it applied in the State would have precedence. The case's brief facts are as that the Motor Accidents Claim Tribunal in Allahabad, in an award dated 17.01.2018, awarded compensation of Rs.24,43,432/- plus 7% interest for the death of one Jairam Shukla in an accident. The Insurance Company's appeal against the Tribunal's decision was denied by the Allahabad High Court. The Insurance Company has filed an appeal with the Supreme Court.

The Compensation was calculated using Rule 220A of the Uttar Pradesh Motor Vehicles Rules²³. The applicable Rule 3(iii) of the Rules is as follows:

“(3) A deceased person's future prospects are factored into his or her actual income or minimum wage as follows:

(iii) If you are above 50 years old, you will receive 20% of your pay.”

The Insurance Company argues that Rule 220A's sub-rule 3(iii) is in conflict with the Supreme Court's Constitution Bench's decision in National Insurance Company Ltd. vs. Pranay Sethi²⁴ The debate in the Pranay Sethi case emerged from the question of what should be added to the deceased's future possibilities whether he was self-employed or on a fixed pay with no opportunity for annual increment.

Sarla Verma v. DTC,²⁵ was decided by the Supreme Court to make it a regulation that if the deceased had permanent employment and was between the ages of

²⁰ (2014) 8 SCC 883

²¹ on 6 January, 2020 MACA.NO. 2068 of 2010

²² on August 6, 2021 SPL No. 26687\2018,

²³ Rule 1998

²⁴ Ibid

²⁵ Ibid

40 to 50, 50 percent of actual wage may be added, and no addition could be made if the deceased was older than 50. The courts will normally take just the real income at the time of death where the deceased was self-employed or had a fixed wage with no provision for annual increase, and the departure is only permitted in rare and extraordinary cases requiring unusual circumstances. Section 168 of the Motor Vehicles Act deals with the concept of just compensation which should be established on the basis of justice, reasonableness and equitability, because such a conclusion can ever be mathematically precise or flawless. The insurance Act establishes a framework for just compensation, and claimant's legal heirs should not expect a windfall. The appropriate age is determined by the deceased's age and income. The multiplier formula was defined in Sarla Verma and approved in Reshma Kumari consistency and the idea of standardisation are the watchwords and on the basis of age a specific and certain multiple should be used.

The Constitution Bench ruled in Pranav Sethi as follows: After giving it careful thought, we believe that if we accept the idea of standardisation, there is no reason why the same approach should not be applied to the self-employed or those on a fixed wage. It would be unreasonable to apply the doctrine of actual income at the time of death and not add any amount for future prospects to the income for the purpose of determining the multiplicand. The determination of income for the purpose of computing compensation must take into account future prospects in order for the approach to be within the scope and ambit of just compensation as defined by Section 168 of the Act. There is an appropriate assurance for those who have had permanent employment with an

incorporated provision of annual increment. However, it would be inappropriate to say that the legal representatives of a deceased employee on a fixed wage would not be entitled to the benefit of future prospects for the purposes of calculating compensation. It's because, in such a case, the criterion for separating the two would be certainty on the one hand and static on the other. On the one hand, one might believe that the comparable measure is certainty while on the other hand; one might believe that the comparative measure is uncertainty. It's because a self-employed individual is affected by price increases, and there's always a constant endeavour to improve one's situation as a source of revenue for subsistence when a salaried person's purchasing power improves as a result of pay raises, increments, or other changes in service conditions, there is always a competitive mentality in the private sector to raise the compensation in order to gain better efficiency from the employees. Similarly, a self-employed person is obligated to pool his resources and increase his charges/fees in order to maintain the same standard of living. The belief that he will remain static and that his income would remain stagnant is in direct opposition to the core principle of human attitude, which is to live with dynamism and to adapt and change with the times. Despite the fact that it may appear to be suitable, there cannot be any change.

Despite the fact that, unlike a person with permanent work, there is certainty in addition to existing income, the abovementioned perception does not merit acceptance. We are inclined to believe that the percentage that is aimed for or applied to legal representatives who claim on behalf of the deceased who had a permanent employment versus a person who is self-employed or on a set wage may fluctuate to

some degree. However, failing to apply the concept of standardisation because of a perceived lack of confidence would be comparable to ignoring the marrows of ground reality. As a result, a degree-test is required, unless the degree-test is used and the parties are left to decide.

It would be unfair and inequitable to adduce evidence to prove. The percentage idea must be integrated into the degree test. Taking into account the cumulative factors, such as the passage of time, the changing society, price escalation, the change in price index, the human tendency to follow a particular pattern of life, etc. an addition of 40% of the deceased's established income towards future prospects, and a 25% addition where the deceased was between the ages of 40 and 50 years, would be reasonable."

The Court in Pranav Sethi was not satisfied by the Apex Court's earlier rulings in Sarla Verma (above) and Reshma Kumari (supra) that no addition is needed where the injured/deceased is more than 50 years old, and held as follows:

"The fact that the remuneration has not been the same can be taken into account by the courts. When a person has permanent work, there is always the possibility of advancement for one reason or another. It is an undesirable concept to state as a rule of thumb that no additions would be made after 50 years. If the deceased is between the ages of 50 and 60, we believe there should be a 15% increase, and if the deceased is between the ages of 50 and 60, there should be a 15% increase".

It was simply in the form of an indication because there was no controlling concept in

the statutory regime. If a legislative instrument has devised a formula that provides a superior or higher advantage, the statutory instrument must be allowed to operate unless it is proven to be illegal. With life expectancy rising and seniors working in the private sector and in their professions for longer than the statutory retirement age, the government should consider revising the addition of 20% to 30% in the statute itself.

This isn't the end of the debate. The topic of whether there should be no addition if the dead is over 50 years old remains unanswered. In Reshma Kumari v. Madan Mohan²⁶ the fact that the pay has not remained constant can be taken into account by the courts. When a person has permanent work, there is always the possibility of advancement for one reason or another to position oneself as a thumb for several reasons. A regulation stating that no additions will be made after 50 years is unacceptably restrictive. We believe that if the deceased is between the ages of 50 and 60, there should be a 15% increase, and that there should be no increase after that. Similarly, between the ages of 50 and 60, the extra for self-employed or people on a fixed wage should be 10%. The aforementioned yardstick has been established in order for tribunals and courts to adopt a consistent approach.

In National Insurance Company Limited v. Santosh Devi²⁷ A person's wages or total emoluments/income would remain the same throughout his life if he is self-employed or hired on a fixed salary with no provision for annual raise, etc." It is acceptable to assume that a person who is self-employed or employed on a fixed wage will see a 30% rise in total income over

²⁶ 2013 9 SCC 65; (2013) 4 SCC (Civ) 191; (2013) 3 SCC (Cri) 826

²⁷ 10 March, 2021 MA No. 01\2019

time, and that if he or she is injured in an accident, the same calculation should be applied for calculating the amount of compensation to be paid.

In **Jagdish and Others v. Mohan and Others**²⁸ The benefit of future prospects should not be limited to people who have permanent employment, it should be extended to those who are self-employed. Where the victim's age at the time of the accident was less than 40 years, an addition of 40% of the established income shall be made in the event of a self-employed individual.

In **New India Assurance Co. Ltd v. Parminder Singh**²⁹

The sufferer was unable to continue working as a labourer or perform any agricultural tasks. The victim had suffered a lifelong disability of 75%, for which he was given an additional 50% of his income as a 'future prospect,' bringing his total income from Rs. 10,000 to Rs. 15,000 rupees. Shock, pain and suffering, already suffered or likely to be suffered in the future;

Damages to compensate for the loss of amenities of life which may include a variety of matters i.e. on account of injury the claimant may not be able to walk, run or sit. Damages for loss of expectation of life i.e. on account of injury the normal longevity of the person concerned is shortened; Inconvenience, hardship, discomfort, disappointment, frustration and mental stress in life.

The Court propounded that whilst it is true that assessment of injury of one limb or to one part may not entail permanent injury to the whole body, the inquiry which the court has to conduct is the resultant loss which

the injury entails to the earning or income generating capacity of the claimant. In other words, the impact of the disability caused to the victim on his ability to carry out his vocational work needs to be pursued by ignoring the ground truth considered in a manner so as to grant just and proper compensation to the appellant towards loss of future earnings. Compensation for loss of future earnings, therefore, has to be proper and just to enable him to live a life of dignity and not compensation which is elusive.

Furthermore, the Court highlighted that any scaling down of the compensation should require something more tangible than a hypothetical conjecture that notwithstanding the disability, the victim could make up for the loss of income by changing his vocation or by adopting another means of livelihood. Assessed in such a way as to provide the appellant with just and sufficient compensation for the loss of future earnings. live a dignified life, not compensation that is illusive. Furthermore, the Court stated that any reduction in compensation should be based on something more concrete than a speculative assumption that, notwithstanding the victim's condition, he may compensate for the loss of income by changing his job or adopting a different way of life. Inflicted due to such injuries undermine the dignity (which is now recognized as an intrinsic component of the right to life under Article 21) of the individual, thus depriving the person of the essence of the right to a wholesome life which she or he had lived, hitherto. If courts nit-pick and award niggardly amounts oblivious of these circumstances, there is resultant affront to the injured victim.

²⁸ 6 March, 2018 civil Appeal No. 2217 of 2018

²⁹ 1 July, 2019 civil Appeal No. 5123\2019

On carefully examining the arguments presented from both the sides and considering the cases discussed above, the Court held that in the present case, the loss of an arm, in the opinion of the court, resulted in severe income earning impairment upon the appellant. As a typist/data entry operator, full functioning of his hands was essential to his livelihood. The extent of his permanent disability was estimated to be 89 %; however, the High Court reduced it to 45 % on an entirely wrong application of some 'proportionate' principle, which was illogical and unsupportable in law.

In view of the above conclusions, the Court while considering the enhancement towards loss of earning capacity and future prospects modified the impugned order of the High Court and substituted the sum of Rs 19,65,600/- for the value of Rs 7,77,600/-. The extent of his permanent disability was estimated to be 89 percent; however, the High Court reduced it to be 45 percent based on an irrational and unsupportable use of some 'proportional criterion. In light of the foregoing determinations, the Court modified the challenged order of the High Court by substituting the sum of 19,65,600/- for the value of 7,77,600/- , while considering the enhancement towards loss of earning ability and future prospects. (**Pappu Dev Yadav v. Naresh Kumar and others**)³⁰

In **Rajasthan State Road Transport v. Kailash Nath Kothari & Ors**³¹. In this case, a bus was involved in an accident, and the vehicle's driver was not the bus's genuine owner. Furthermore, the bus had been rented to a Corporation, which had appointed the bus's driver. As a result, the bus was not in the custody of its rightful

owner. The Corporation was found accountable for the accident and ordered to compensate the victims by the Court.

In **Pranay Sethi v. National Insurance Company Limited**³² The Supreme Court established rules for determining the amount of compensation that the offender must pay to accident victims who are self-employed, have a fixed wage, or have a permanent salary in this case. The concept of 'just recompense,' according to the Court, should be founded on reasonableness, equity, and fairness.

In Motor Accident claim cases, the Supreme Court has asked the Motor Accident Claims Tribunals and High Courts to be liberal and grant "fair compensation" to claimants. "It is true that determining just compensation cannot be equated to a bonanza," a bench of Justices P. Sathasivam and M.Y. Eqbal wrote. On the other hand, the concept of just compensation implies that Tribunals and courts apply fair and equitable standards and take a reasonable approach. The Bench stated that in vehicle accident cases, the determination of quantum must be broad "because the law values life and limb in a free country on generous scales. The adjudicating authority, when assessing the quantum of compensation," Justice Sathasivam wrote in his judgement.

Normally, interest should be paid from the date of the petition's filing. The bench stated that interest should normally be granted from the date of filing of the petition, and that if an appeal enhancement is made, interest should be granted from the date of filing of the petition again. Only in extraordinary instances, such as when the claimants file an appeal after an

³⁰ 13 September, 2018 Civil Appeal No. 2567 of 2020

³¹A.I.R 1997 S.C. 3444

³² ibid

unreasonable amount of time has passed, or when the case is delayed due to the claimant's fault, can interest be granted from a later date. The tribunals/High Courts must, however, provide reasons why interest is not being paid from the date of the petitioner's submission.

The fundamentals in terms of the rules for determining just compensation under the Act are well-established. Injuries generate physical deprivation, giving the claimant the right to sue for damages. Damages may vary depending on the severity of the claimant's injuries caused in an accident. The claimant may suffer consequential damages as a result of the injuries, such as, Loss of earnings, treatment related expenses such as medical bills, transportation, special diets, and associated fees, loss or decrease of life's pleasures due to the loss of a specific bodily part, and loss of future earning capacity. Damages might be monetary or non-monetary, but they must all be calculated in Rupees and Paise. Human misery and personal deprivation cannot be equated with money. However, this is exactly what the Act directs the courts to do. The Court must make a reasonable attempt to award damages in order to compensate the claimant for the victim's loss. On the one hand, compensation should not be assessed too conservatively, but on the other hand, compensation should not be assessed so liberally that it becomes a reward for the claimant.

When determining compensation, the Court should consider the degree of deprivation and the loss produced by that deprivation. Just compensation is the term used to describe such remuneration. Personal injury compensation or damages should be sufficient enough to recompense the

harmed for the deprivation they have endured for the rest of his/her life. They should not be only symbolic damages. The principles for granting compensation have been articulated in a number of decisions. While emphasising the importance of full and adequate damages, Field, J. **held in Phillips Vs. Western Railway Co**³³ that you cannot put the plaintiff back into his original position, but you must bring your reasonable common sense to bear, and you must always remember that this is the only occasion on which compensation can be given. The plaintiff will never be able to sue for it again. As a result, you must now compensate him once and for all. He has done no wrong, but he has been wronged by the defendants, and you must take action.

It is in his best interests to provide him with full and fair compensation for what he has suffered. Furthermore, the Tribunals should keep in mind that the damages in all of these circumstances should be such that even a tortfeasor can declare that he has sufficiently atoned for his misadventure. **Lord Halsbury stated in the case of Mediana**³⁴ Of course, the entire field of inquiry into damages is one of tremendous complexity. You can't always lay out any principles on which to award damages, yet, it's up to the jury, or those who stand in for the jury, to decide how much money should be awarded as compensation for a wrongful act.

Take the most common and straightforward example; how does one quantify pain and suffering in terms of monetary value? Nobody can claim that any numerical calculation can determine the exact amount of money that would represent the pain and suffering that a person has endured as a result of their actions. a result of a mishap

³³ (1874) 4 QBD 406

³⁴ [1900] AC 113,

To be honest, I believe it would be difficult to argue that a person would be entitled to no compensation for such an event. What mainly is concerned with previous anguish and suffering? However, the law acknowledges that as a subject for which damages may be awarded.

Lord Morri, made the following points in his speech in **H. West & Son Ltd. vs. Shephard**³⁵ Money may be awarded in order to obtain something tangible to replace something of a similar sort that has been destroyed or lost. Money, on the other hand, cannot repair a bruised and shattered physical frame. Judges and courts can only award monetary amounts that must be regarded as providing adequate remuneration. Throughout the process, some regularity in the general method of approach must be sought. By general consent, awards must be reasonable and moderately assessed. Furthermore, it is eminently desirable that comparable injuries be paid by equivalent awards to the extent practicable.

Lord Devlin, observed in the same case that the proper approach to the problem was to adopt a test as to what contemporary society would consider to be a fair sum, such that the wrongdoer could hold up his head among his neighbours and say with their approval that he had done the right thing, which should be kept in mind by the court when determining compensation. In cases of personal harm In the case of **Ward vs. James Lord Denning** spoke for the Court of Appeal and established the following three fundamental rules to be applied in similar situations:

1. To begin with, accessibility in cases of serious injury, where the body has been wrecked or the brain has

been destroyed, determining a fair monetary compensation is extremely difficult, so difficult that the award must essentially be a conventional figure derived from experience or awards in similar cases.

2. Second, there should be some consistency in rewards so that comparable choices can be made in similar circumstances, otherwise, the community would be dissatisfied and the administration of justice will be heavily criticised.
3. Finally, predictability is an important ability. Parties should be able to estimate with some degree of accuracy the amount likely to be awarded in a given case, because this allows cases to be handled peacefully rather than going to court, which is highly good for the public good. Damage evaluation in personal injury cases is extremely complex. It's difficult to put a monetary value on a person's bodily and mental suffering. A certain amount of calculated guesswork and supposition is required. In the circumstances, an appraisal should be done to the best of one's ability. Parties should be able to estimate with some degree of accuracy the amount likely to be awarded in a given case, because this allows cases to be handled peacefully rather than going to court, which is highly good for the public good.

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³⁵ 1963 2 WLR 1359

required. In the circumstances, an appraisal should be done to the best of one's ability. The person physically wounded may collect both for his pecuniary losses and his non-pecuniary losses, according to Mc Gregor's Treatise on Damages³⁶ referring to heads of damages in personal injury lawsuits. The non-pecuniary losses are divided into three categories:

- a. pain and suffering,
- b. loss of amenities of life,
- c. And loss of expectation of life.

The pecuniary losses are divided into two categories: loss of earnings and other gains that the plaintiff would have made had he not been injured, and medical and other expenses that he is subjected to as a result of the injury.

The Hon'ble Supreme Court of India ruled in **M/S Concord of India Insurance Co. Ltd. vs. Nirmala Devi & Ors**,³⁷ The Hon'ble Supreme Court of India held that the quantum decision must be liberal, not stingy, because the law in a free country values life and limb on generous scales.

The Supreme Court held in **R.D. Hattangadi vs. Pest Control (India) Pvt. Ltd**,³⁸ dealing with the various heads of compensation in injury cases, that, In general, when determining the amount of compensation due to an accident victim, the damages must be assessed separately as pecuniary and special damages. Pecuniary damages are those that the victim has actually incurred and that can be estimated in terms of money, non-pecuniary losses are those that cannot be accessed through arithmetical calculations.

In order to fully comprehend two concepts, Expenses incurred by the claimant may be included in monetary damages. Attendance at the hospital other material loss; loss of profit earned up to the date of trial. Non-pecuniary damages may include;

- (i) Damages for mental and physical shock, pain, and suffering already experienced or likely to be experienced in the future;
- (ii) Damages to compensate for loss of amenities of life, which may include a variety of things, such as the claimant's inability to walk, run, or sit due to injury;
- (iii) Damages for loss of expectation of life, which may include a variety of things, such as the claimant's inability to walk,

The Supreme Court established the heads under which compensation for personal injuries should be paid in **Raj Kumar v. Ajay Kumar and Others**³⁹ in personal injury cases, compensation is awarded under the following headings:

1. Damages in money.
2. (Special damages) i.e. treatment, hospitalisation, medicines, transportation, nourishing food, and other expenses.
3. Loss of wages (and other gains) that the wounded would have made if he hadn't been hurt, including: earnings lost during treatment,
4. Future earnings lost due to permanent disability.

The Medical costs in the future.

- a. Damages that are not monetary in nature (General damages)
- b. As a result of the injuries, damages for pain, suffering, and trauma.

³⁶ 14th Edn., para 1157,

³⁷ 1980 ACJ 55 (SC).

³⁸ (1995) 1 SCC 551

³⁹ (2011) 1 SCC 343.

- c. Loss of luxuries (and/or possibilities of luxuries)
- d. Loss of hope for the future (marriage) (shortening of normal longevity)

The Supreme Court held in **K. Suresh vs. New India Assurance Company Ltd. & Ors.**⁴⁰ that there cannot be actual compensation for heart anguish or mental tribulations." There can't be any true compensation for heartache or mental agony. The quaint essentiality is found in the pragmatic computation of the sustained loss, which must be realistically approximated. As a result, Section 168 of the Motor Vehicles Act⁴¹ mandates the payment of just compensation. As a result, determining "fair compensation," which is neither a windfall nor a jackpot but should not be a pittance, becomes a difficult task for a court of law?

The Tribunal has the authority to award compensation in excess of the amount claimed in order to provide reasonable recompense. The Supreme Court's observations in *State of Haryana Vs. Jasbir Kaur*,⁴² are relevant in this regard.

It's worth noticing the following points from the Supreme court cases, that the Tribunal established under Section 168 of the Act is required to make an award determining the amount of compensation, which must be in the form of real damages that appear to the Tribunal to be just and reasonable. It is important to remember that recompense for the loss of limbs or life cannot be measured in golden scales. However, it is important to remember that the compensation is not supposed to be a windfall for the victim. The compensation

must be equitable, according to the law, and it cannot be a windfall, it cannot be a source of profit. However, the same should not be a trifle. The courts and tribunals have a responsibility to examine the numerous variables and calculate the appropriate amount of compensation. What constitutes just recompense is a difficult subject to answer. There can be no universally applicable golden criterion for determining the worth of a human life or limb. Damages cannot be calculated with precision using mathematical procedures. It would rely on the specific events and circumstances, as well as any accompanying odd or unique qualities, if any. Every method or mode used to evaluate compensation must be seen in the context of just compensation, which is the most important factor. Despite the fact that the expression appears to be only a broad one. The Tribunal's ruling must be rational, based on a judicious approach, and not the result of whims, wild guesses, or arbitrariness, as the statement appears to imply. The term simply means, equitability, justice, and reasonableness, as well as non-arbitrary. It cannot be just if this is not the case.

In Helen C. Rebello v. Maharashtra State Road Transport Corporation⁴³

When medical data is presented in regard to the injuries and their effects, particularly the level of permanent disability, the Motor Accidents Claims Tribunal should not be a bystander. The Motor Vehicles Act⁴⁴, and Sections⁴⁵, makes it clear that the Tribunal is not a neutral arbitrator, but as an active explorer and seeker of truth who is expected to conduct an inquiry into the claim for the purpose of finding the fair recompense. As a result, the Tribunal

⁴⁰ (2012) 12 SCC 274,

⁴¹ MVA, 1988

⁴² (2003)

⁴³ (1999(1) SCC 90)

⁴⁴ MVA, 1988

⁴⁵ section 168 & 169

should take an active part in determining the real and accurate position in order to determine "fair compensation."

For understanding the medical evidence and assessing the physical and functional disability, the Tribunal should preferably have a Medical Dictionary and a Handbook for evaluation of permanent physical impairment, for example, (the Manual for Evaluation of Permanent Physical Impairment for Orthopedic Surgeons, prepared by the American Academy of Orthopedic Surgeons or its Indian equivalent or other authorised texts) when dealing with personal injury cases.

The Tribunal has the authority to keep in light of the First Schedule to the Workmen's Compensation Act⁴⁶, which provides some guidance on the level of permanent impairment in certain sorts of work-related injuries. If a doctor gives testimony using technical medical language, the Tribunal should instruct him to also clarify the nature and effect of the damage in basic non-medical terms.

If a doctor testifies regarding the percentage of permanent disability, the Tribunal must determine if the percentage of disability is the functional disability as a whole or as a single limb. If the proportion of permanent disability is expressed in terms of a limb, the Tribunal will be required to consult with doctors. opinion on whether the corresponding functional permanent handicap may be calculated using the entire body, and if yes, what proportion. The goal of social welfare legislation is to discover ways to assist the victim in all areas feasible. The amount of compensation awarded to the claimant/appellant was

increased by the Bench to Rs. 62, 27, 000/-

F. CONCLUSION:

Accident claims in several states are sitting interminably before tribunals due to a lack of judicial staff or other pathological factors, according to Justice Krishna Iyer. Courts must give this bleeding class of cases top attention, follow a simplified procedure that does not violate natural justice, explore pretrial agreements to minimise the dispute, and remember that "wiping every tear from every eye" has judicial significance, because the law owes to follow justice. Whatever mechanism is used in awarding compensation to the victims or legal heirs of the deceased in tragic incidents, it is the responsibility of the Legislature and the tribunals to ensure that the award sum is disbursed to the victims or legal heirs as soon as possible, and the process for determining the amount of compensation should be as quick as possible. Justice J.R. Midha stated in an 'Annual National Seminar on the "Working of the Motor Accident Claim Tribunals in India" that settling MACT cases is fairly simple. He stated that if the cases are not resolved in a timely manner, the entire country will be clogged with MACT cases. He claims that if the person's age, family members, and income are known, solving the case will take only three minutes. No one can truly compensate for the loss of life or a limb in an accident. The goal is to compensate the person to the greatest extent possible. Although the future is uncertain, there is a need to standardize somewhere. Compensation must be equitable, not inequitable, nor a lottery.

⁴⁶ WCA, 1923